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Filing date: **07/08/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91203884
Party	Defendant Joel L. Beling
Correspondence Address	JOEL L BELING 1 MIRBOO COURT, DALLAS VICTORIA, 3047 AUSTRALIA joelbeling@hotmail.com
Submission	Motion to Compel Discovery
Filer's Name	Joel Beling
Filer's e-mail	joelbeling@hotmail.com
Signature	/JOEL BELING/
Date	07/08/2012
Attachments	Motion to Reset Trial Schedule- Color Wars Opposition.pdf ( 3 pages )(93751 bytes ) Exhibit 26- Ltr to Beling 2012.6.18_2.pdf ( 1 page )(240693 bytes ) Exhibit 27- Opp's RFA to App.pdf ( 8 pages )(1944612 bytes ) Exhibit 28- Opp's RFP to App.pdf ( 10 pages )(3202894 bytes ) Exhibit 29- Opp's ROGS to App.pdf ( 8 pages )(2521449 bytes ) Exhibit 30- Opp's_Objs_and_Resp_to_RFP.pdf ( 10 pages )(3505953 bytes ) Exhibit 31- Opp's_Objs_and_Ans_to_ROGS.pdf ( 7 pages )(2473772 bytes ) Exhibit 32- Opp's_Objs_and_Resp_to_App's_RFA.pdf ( 12 pages )(4155209 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In Re: Application Serial No. 85/324,443  
For the Mark: COLOR WARS  
Filed: May 18, 2011  
Published in the Official Gazette: January 17, 2012

	)	
Ennis, Inc.	)	
	)	
Opposer	)	
	)	
	)	Opp. No. 91203884
v.	)	
	)	
	)	
Joel L. Beling d/b/a Supa Characters Pty Ltd	)	
	)	
Applicant	)	
	)	
	)	

**APPLICANT’S MOTION TO RESET OPPOSITION SCHEDULE**

To: Ennis Inc. (“Opposer”), 2441 Presidential Parkway, Midlothian, TX 76065,  
United States.

Applicant refers to the attached Applicant’s Motion to Compel Discovery Responses and respectfully seeks the Trademark Trial and Appeal Board’s leave to reset the trial schedule because of Opposer’s refusal and failure to respond to Applicant’s Discovery requests.

In order to prepare for trial, which is currently set of for 21<sup>st</sup> December 2012, Applicant must have the cooperation of Opposer as Discovery is pursued. This cooperation must of necessity include the following the mandates of the Federal Rules of Civil Procedure. Opposer’s cooperation is especially paramount to Applicant because Applicant is not a resident of the United States and, being a foreign resident residing in Australia, Applicant has no access whatsoever, to any of the materials in the possession, custody and control of Opposer. Applicant has complied fully with his Discovery obligations whereas Opposer has defiantly flaunted its Discovery obligations.

Opposer's delay in responding has significantly prejudiced Applicant's case preparation. Accordingly, Applicant moves to reset the Trial Schedule, as per Table 1 below, in order to receive a fair trial.

Table 1. Proposed Opposition Schedule

Expert Disclosures Due	November 23, 2012
Discovery Closes	December 23, 2013
Plaintiff's Pretrial Disclosures	February 7, 2013
Plaintiff's 30-day Trial Period Ends	March 21, 2013
Defendant's Pretrial Disclosures	April 5, 2012
Defendant's 30-day Trial Period Ends	May 22, 2012
Plaintiff's Rebuttal Disclosures	June 6, 2013
Plaintiff's 15-day Rebuttal Period Ends	July 6, 2013

PRAYER

WHEREFORE, PREMISES CONSIDERED, applicants prays that this Applicant's Motion to Reset Opposition Schedule be granted.

Dated: July 8, 2012

Respectfully submitted,

JOEL BELING

By: /Joel Beling/

Joel L. Beling  
1 Mirboo Court  
Dallas, Victoria, 3047  
Australia  
(03) 8307 6932 (telephone)  
0405 329 078 (cell)  
joelbeling@hotmail.com

Applicant

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing APPLICANT'S MOTION TO RESET OPPOSITION SCHEDULE was served on all parties, this the 8<sup>th</sup> day of July 2012, by sending the same electronic mail, to the following:

Scott A. Meyer  
Thomas Jacks  
CHALKER FLORES, LLP  
smeyer@chalkerflores.com  
tjacks@chalkerflores.com  
ATTORNEYS FOR OPPOSER

/Joel Beling/  
Joel Beling  
Applicant



# CHALKER FLORES, LLP

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June 18, 2012

*Via Electronic Mail*

Joel L. Beling  
1 Mirboo Court  
Dallas, Victoria 3047  
Australia

Re: *Ennis, Inc. v. Joel L. Beling d/b/a Supa Characters Pty Ltd*  
Opposition No. 91203884, USPTO Trademark Trial and Appeal Board

Dear Mr. Beling,

In response to your letter dated June 12, 2012, we have reviewed our responses and objections to your various discovery and stand by the responses and objections as provided. We also believe that the objections made provide adequate explanation of the bases for our position.

Please be advised that, should you file a motion to compel based upon your reasoning set forth in your June 12, 2012 correspondence, we will seek attorney's fees from you for any time spent in relation to such a motion and for the time spent responding to your improper discovery requests in the first place.

We are happy to discuss this with you should you wish to call us.

Sincerely,



Scott A. Meyer

SAM/cm

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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	)	
Joel L. Beling d/b/a Supa Characters Pty Ltd	)	
	)	
Applicant	)	
	)	

**OPPOSER'S FIRST REQUEST FOR ADMISSIONS TO APPLICANT**

To: Joel L. Beling d/b/a Supa Characters Pty Ltd, Applicant, 1 Mirboo Court, Dallas, Victoria 3047, Australia.

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Ennis, Inc. ("Opposer") hereby serves its First Request for Admissions on Joel L. Beling d/b/a Supa Characters Pty Ltd ("Applicant"), to be answered within thirty (30) days from receipt of these Requests.

**A. DEFINITIONS**

The following definitions shall have the following meanings, unless the context requires otherwise:

1. "Opposer" and/or "Ennis" as well as a party's full or abbreviated name or a pronoun referring to a party, means the party, and where applicable, the party's agents, representatives, officers, directors, employees, partners, corporate agents, subsidiaries, affiliates, or any other person acting in concert with the party or under the party's control, whether directly or indirectly, including any attorney.

2. "You" or "your" means Joel L. Beling d/b/a Supa Characters Pty Ltd, Applicant, as well as its agents, employees, and all other persons acting on behalf of Applicant or its successors, predecessors, heirs, beneficiaries or assigns.

3. "Document" means all written, typed, or printed matter and all magnetic, electronic, or other records or documentation of any kind or description in your actual possession, custody, or control, including those in the possession, custody, or control of any and all present or former directors, officers, employees, consultants, accountants, attorneys, or other agents, whether or not prepared by you, that constitute or contain matters relevant to the subject matter of the action.

4. "Possession, custody, or control" of an item means that the person either has physical possession of the item or has a right to possession equal or superior to that of the person who has physical possession of the item.

5. "Person" means any natural person, corporation, firm, association, partnership, joint venture, proprietorship, governmental body, or any other organization, business, or legal entity, and all predecessors or successors in interest.

6. "COLOR WARS" defines the mark COLOR WARS, U.S. Trademark Application Serial No. 85/324,443, applied for by Joel L. Beling d/b/a Supa Characters Pty Ltd.

7. "COLORWORX" defines the mark COLORWORX<sup>®</sup>, U.S. Trademark Registration No. 3,372,884 and includes a variety of printing goods and printing services that are international Class 40 products manufactured and put into the stream of commerce by Ennis, Inc.

8. "Identify" or "describe" when referring to a person, means you must state the following:

- a. The full name.
- b. The present or last known residential address and residential telephone number.
- c. The present or last known office address and office telephone number.
- d. The occupation, job title, employer, and employer's address at the time of the event or period referred to in each particular interrogatory.
- e. In the case of any entity, identify the officer, employee, or agent most closely connected with the subject matter of the interrogatory and the officer who is responsible for supervising that officer or employee.

9. "Identify" or "describe" when referring to a document, means you must state the following:

- a. The nature (e.g., letter, handwritten note) of the document.
- b. The title or heading that appears on the document.
- c. The date of the document and the date of each addendum, supplement, or other addition or change.
- d. The identity of the author and of the signer of the document, and of the person on whose behalf or at whose request or direction the document was prepared or delivered.
- e. The present location of the document, and the name, address, position or title,

and telephone number of the person or persons having custody of the document.

**B. REQUESTS FOR ADMISSIONS**

Admit or deny the following:

REQUEST NO. 1: Opposer is the owner of U.S. Trademark Registration No. 3,372,884 for the mark COLORWORX®.

RESPONSE:

REQUEST NO. 2: Opposer, or its related companies, has continuously used the COLORWORX® mark in interstate commerce for a variety of printing goods and printing services.

RESPONSE:

REQUEST NO. 3: Since August, 2002, Opposer's mark, COLORWORX®, has continuously appeared in substantial advertising and promotion of Opposer's printing goods and printing services.

RESPONSE:

REQUEST NO. 4: Opposer's mark, COLORWORX®, is closely identified with Opposer's goods and has gained very valuable public recognition.

RESPONSE:

REQUEST NO. 5: Opposer has used the mark, COLORWORX®, within the last three years.

RESPONSE:

REQUEST NO. 6: Opposer has continuously used its mark, COLORWORX®, in interstate commerce since long prior to any date upon which Applicant can rely.

RESPONSE:

REQUEST NO. 7: Applicant's application was filed on May 18, 2011.

RESPONSE:

REQUEST NO. 8: Applicant's Application is listed as an intent-to-use application.

RESPONSE:

REQUEST NO. 9: Opposer's trademark rights for the COLORWORX<sup>®</sup> mark has priority over Applicant's mark, COLOR WARS.

RESPONSE:

REQUEST NO. 10: Opposer has not abandoned the mark COLORWORX<sup>®</sup>.

RESPONSE:

REQUEST NO. 11: Opposer currently provides "letterhead" bearing the mark COLORWORX<sup>®</sup>.

RESPONSE:

REQUEST NO. 12: Opposer has provided "business cards" bearing the mark COLORWORX<sup>®</sup> since August of 2002.

RESPONSE:

REQUEST NO. 13: Opposer has provided "letterhead" bearing the mark COLORWORX<sup>®</sup> since August of 2002.

RESPONSE:

REQUEST NO. 14: Opposer currently provides "sell sheets" bearing the mark COLORWORX<sup>®</sup>.

RESPONSE:

REQUEST NO. 15: Opposer has provided "sell sheets" bearing the mark COLORWORX<sup>®</sup> since August of 2002.

RESPONSE:

REQUEST NO. 16: Opposer currently provides “rack cards” bearing the mark COLORWORX®.

RESPONSE:

REQUEST NO. 17: Opposer has provided “rack cards” bearing the mark COLORWORX® since August of 2002.

RESPONSE:

REQUEST NO. 18: Opposer currently provides “postcards” bearing the mark COLORWORX®.

RESPONSE:

REQUEST NO. 19: Opposer has provided “postcards” bearing the mark COLORWORX® since August of 2002.

RESPONSE:

REQUEST NO. 20: Opposer currently provides “brochures” bearing the mark COLORWORX®.

RESPONSE:

REQUEST NO. 21: Opposer has provided “brochures” bearing the mark COLORWORX® since August of 2002.

RESPONSE:

REQUEST NO. 22: Opposer currently provides “posters” bearing the mark COLORWORX®.

RESPONSE:

REQUEST NO. 23: Opposer has provided “posters” bearing the mark COLORWORX® since August of 2002.

RESPONSE:

REQUEST NO. 24: The mark COLORWORX® is used in interstate commerce for “printing goods and printing services.”

RESPONSE:

REQUEST NO. 25: Statements made in Ennis’s application to the United States Patent and Trademark Office to register the mark COLORWORX® were not false or misleading.

RESPONSE:

REQUEST NO. 26: Statements made in Ennis’s application to the United States Patent and Trademark Office to register the mark COLORWORX® did not constitute a knowingly false representation of material fact.

RESPONSE:

REQUEST NO. 27: Ennis did not commit fraud on the United States Patent and Trademark Office in obtaining the registration for the mark COLORWORX®.

RESPONSE:

REQUEST NO. 28: Applicant does not intend to use the mark COLOR WARS in the United States.

RESPONSE:

REQUEST NO. 29: Applicant filed an application to register the mark COLOR WARS on May 18, 2011.

RESPONSE:

REQUEST NO. 30: Opposers Application to register the mark COLOR WARS describes similar printing goods and printing services as the mark COLORWORX®.

RESPONSE:

REQUEST NO. 31: Opposers Application to register the mark COLOR WARS in international class 16 describes similar printing goods and printing services as the mark COLORWORX<sup>®</sup> including posters, envelopes for stationery, office paper stationery, office stationery, paper stationery, partially printed forms, printed materials and brochures to name a few.

RESPONSE:

REQUEST NO. 32: Applicant's mark so resembles Opposer's mark as to be likely to cause confusion, mistake or deceive.

RESPONSE:

Dated: April 26, 2012

Respectfully submitted,

CHALKER FLORES, LLP

By: 

Scott A. Meyer

Texas Bar No. 24013162

Thomas G. Jacks

Texas Bar No. 24067681

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[smever@chalkerflores.com](mailto:smever@chalkerflores.com)

[tjacks@chalkerflores.com](mailto:tjacks@chalkerflores.com)

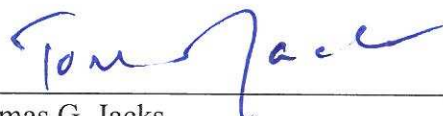
**ATTORNEYS FOR OPPOSER**



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing OPPOSER'S REQUEST FOR ADMISSIONS TO APPLICANT was served on all parties, this the 26<sup>th</sup> day of April, 2012, by sending the same via electronic mail, to the following:

Joel L. Beling  
1 Mirboo Court  
Dallas, Victoria 3047  
Australia  
[joelbeling@hotmail.com](mailto:joelbeling@hotmail.com)

  
\_\_\_\_\_  
Thomas G. Jacks

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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In Re: Application Serial No. 85/324,443  
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v.	)	Opp. No. 91203884
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Joel L. Beling d/b/a Supa Characters Pty Ltd	)	
	)	
Applicant	)	
	)	
	)	

**OPPOSER'S FIRST REQUEST FOR PRODUCTION TO APPLICANT**

To: Joel L. Beling d/b/a Supa Characters Pty Ltd, Applicant, 1 Mirboo Court, Dallas, Victoria 3047, Australia.

Ennis, Inc. ("Opposer") serves these Requests for Production on Joel L. Beling d/b/a Supa Characters Pty Ltd ("Applicant") as authorized by Federal Rule of Civil Procedure 34 and Trademark Rule 2.120(d), 37 C.F.R. § 2.120(d).

**DEFINITIONS AND INSTRUCTIONS**

The following terms have the following meanings, unless the context requires otherwise:

1. "Opposer" and/or "Ennis" as well as a party's full or abbreviated name or a pronoun referring to a party, means the party, and where applicable, the party's agents, representatives, officers, directors, employees, partners, corporate agents, subsidiaries,

affiliates, or any other person acting in concert with the party or under the party's control, whether directly or indirectly, including any attorney.

2. "You" or "your" means Joel L. Beling d/b/a Supa Characters Pty Ltd, Applicant, as well as its agents, employees, and all other persons acting on behalf of Applicant or its successors, predecessors, heirs, beneficiaries or assigns.

3. "Communication" means the transmittal of information in the form of facts, ideas, inquiries, or otherwise.

4. "Identify (person)." When referring to a person, "identify" means to give, to the extent known, the person's full name, present or last known address, telephone number, and, when referring to a natural person, the present or last known place of employment. Once a person has been identified in compliance with this paragraph, only the name of that person needs to be listed in response to later discovery requesting the identification of that person.

5. "Identify (document)." When referring to a document, "identify" means to give, to the extent known, the following information: (a) the type of document; (b) the general subject matter of the document; (c) the date of the document; (d) the authors, addressees, and recipients of the document; (e) the location of the document; (f) the identity of the person who has custody of the document; and (g) whether the document has been destroyed, and if so, (i) the date of its destruction, (ii) the reason for its destruction, and (iii) the identity of the person who destroyed it.

6. "Any" should be understood in either its most or its least inclusive sense as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

7. "And/Or." The connectives "and" and "or" should be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

8. "Number." The use of the singular form of any word includes the plural and vice versa.

9. "Possession, custody, or control" of an item means that the person either has physical possession of the item or has a right to possession equal or superior to that of the person who has physical possession of the item.

10. "Person" means any natural person, corporation, firm, association, partnership, joint venture, proprietorship, governmental body, or any other organization, business, or legal entity, and all predecessors or successors in interest.

11. "COLOR WARS" defines the mark COLOR WARS, U.S. Trademark Application Serial No. 85/324,443, applied for by Joel L. Beling d/b/a Supa Characters Pty Ltd.

12. "COLORWORX" defines the mark COLORWORX®, U.S. Trademark Registration No. 3,372,884 and includes a variety of printing goods and printing services that are international Class 40 products manufactured and put into the stream of commerce by Ennis, Inc.

13. "Identify" or "describe" when referring to a person, means you must state the following:

- a. The full name.
- b. The present or last known residential address and residential telephone number.
- c. The present or last known office address and office telephone number.
- d. The occupation, job title, employer, and employer's address at the time of the event or period referred to in each particular interrogatory.
- e. In the case of any entity, identify the officer, employee, or agent most closely connected with the subject matter of the interrogatory and the officer who is responsible for supervising that officer or employee.

14. "Identify" or "describe" when referring to a document, means you must state the following:

- a. The nature (e.g., letter, handwritten note) of the document.
- b. The title or heading that appears on the document.
- c. The date of the document and the date of each addendum, supplement, or other addition or change.
- d. The identity of the author and of the signer of the document, and of the person on whose behalf or at whose request or direction the document was prepared or delivered.
- e. The present location of the document, and the name, address, position or title, and telephone number of the person or persons having custody of the document.

15. "Document" means all written, typed, or printed matter and all magnetic, electronic, or other records or documentation of any kind or description in your actual possession, custody, or control, including those in the possession, custody, or control of any and all present or former directors, officers, employees, consultants, accountants, attorneys, or other agents, whether or not prepared by you, that constitute or contain matters relevant to the subject matter of the action.

16. Wherever in the following interrogatories Applicant is asked to identify documents, it is requested that the documents be identified by stating:

- a. general type of document, *e.g.*, letter, memorandum, report, miscellaneous, notes, etc.;
- b. date;
- c. author;
- d. organization, if any, with which author was connected;
- e. addressee or recipient;
- f. other distributees;

g. organization, if any, with which addressee or recipient, or distributees were connected;

h. general nature of the subject matter to extent that Applicant can do so without divulging matter considered by it to be privileged;

i. present location of such document and each copy thereof known to Applicant, including the title, index number and location, if any, of the file in which the document is kept by the Applicant or the file from which such document was removed, if removed for the purposes of this case, and the identity of all persons responsible for the filing or other disposition of the document.

17. "Relate" or "relating to" as used herein includes, without limitation, referring to, alluding to, responding to, concerning, connected with, commenting on, in respect of, about, regarding, discussing, describing, measuring, reflecting, supporting, analyzing, explaining, constituting, evidencing, or pertaining to.

18. "Privilege." If Applicant relies on any privilege or the work product doctrine in objecting to these Requests or in failing to produce a requested document, please state in the response to the Request that the Applicant is invoking a privilege, specify which privilege or doctrine is being invoked and the nature and reasons supporting the claim of privilege.

19. "Attorney-Client Privilege." If Applicant invokes the attorney-client privilege, please provide the following additional information for each document not disclosed or information withheld, to the extent that providing this information will not destroy the privilege.

- a. the name and job title of the author of the document or communication;
- b. the name and job title of every person who received the document or a copy of it, or who was present when the communication was made or who overheard it;
- c. the relationship between the author(s) and each person who received the document or a copy of it or who was present when the communication was made or who overheard it;
- d. whether the primary purpose of the document or communication was to seek or provide legal advice or services;
- e. the date of the document or communication;
- f. the subject matter(s) addressed in the document or communication;
- g. whether the document or communication was transmitted in confidence; and
- h. a brief statement as to why the document or communication is protected by the attorney-client privilege.

## **REQUESTS FOR PRODUCTION**

REQUEST 1: Produce working papers, notes, calculations, diagrams, photographs, models, exhibits, and other materials, including reports and factual observations, prepared or reviewed by any expert who will testify at trial on Applicant's behalf.

RESPONSE:

REQUEST 2: Produce copies of all transcripts of testimony previously provided by any individual listed by You as an expert witness.

RESPONSE:

REQUEST 3: Produce treatises, rules, regulations, guidelines, statutes, policies, procedures, and any other authoritative materials considered by any testifying expert in forming an opinion.

RESPONSE:

REQUEST 4: Produce invoices, bills, and other billing materials for each expert You expect will testify at trial.

RESPONSE:

REQUEST 5: Produce all photographs, videotapes, drawings, and other tangible things that pertain in any way to the subject matter of this suit.

RESPONSE:

REQUEST 6: Produce copies of complaints or petitions in any action filed by or against You in which the allegations are similar to those of this suit.

RESPONSE:

REQUEST 7: Produce copies of any claim made by or against You for damages similar to those alleged in this suit.

RESPONSE:

REQUEST 8: Produce all oral or written statements made by You or Your representatives concerning this suit.

RESPONSE:

REQUEST 9: Produce all documents and things relating to the creation, consideration, design, development, selection, adoption, and first use of the "COLOR WARS" mark on any product or service.

RESPONSE:

REQUEST 10: Produce representative specimens of each label, container, trade dress, wrapper, packaging, letterhead, sign, catalog, brochure, or other materials used to advertise, market, sell, promote, or otherwise commercialize any of Applicant's "COLOR WARS" mark products or services.

RESPONSE:

REQUEST 11: Produce all documents and things relating to the geographic areas where products or services relating to Applicant's "COLOR WARS" mark are advertised, marketed, sold, or promoted and the length of time each product or service has been advertised, marketed, sold, or promoted in each area.

RESPONSE:

REQUEST 12: Produce all documents and things relating to the distribution channels through which products or services relating to Applicant's "COLOR WARS" mark are advertised, marketed, sold, or promoted.

RESPONSE:

REQUEST 13: Produce all documents and things relating to the classes of customers to whom You advertise, market, sell, or promote products or services relating to Applicant's "COLOR WARS" mark.

RESPONSE:

REQUEST 14: Produce all documents and things relating to the yearly dollar and unit volume of sales to date and projected future dollar and unit volume of sales for each of Applicant's "COLOR WARS" mark products or services.

RESPONSE:

REQUEST 15: Produce all documents and things relating to variable and fixed costs for sales of products or services relating to Applicant's "COLOR WARS" mark.

RESPONSE:

REQUEST 16: Produce all documents and things relating to gross and net profits from sales of products or services relating to Applicant's "COLOR WARS" mark.

RESPONSE:

REQUEST 17: Produce all documents and things relating to the yearly cost to You of advertising, marketing, selling, and promoting products or services relating to Applicant's "COLOR WARS" mark.

RESPONSE:

REQUEST 18: Produce all documents and things concerning Your past, present, and future plans to advertise, market, sell, or promote products or services relating to Applicant's "COLOR WARS" mark.



RESPONSE:

REQUEST 19: Produce representative specimens of all advertising and other promotional materials for products or services relating to Applicant's "COLOR WARS" mark.

RESPONSE:

REQUEST 20: Produce all documents and things relating to Your yearly expenses to date and planned future expenses corresponding to each type of advertising and promotion used for products or services relating to Applicant's "COLOR WARS" mark.

RESPONSE:

REQUEST 21: Produce documents and things relating to Opposer's products or services utilizing the "Color Wars" mark.

RESPONSE:

REQUEST 22: Produce all documents and things You contend supports Your contention that Applicant's "COLOR WARS" mark does not resemble "COLORWORX<sup>®</sup>" when used on or in connection with Your goods and services.

RESPONSE:

REQUEST 23: Produce all documents and things You contend supports Your contention that registration of Applicant's "COLOR WARS" mark will not injure Opposer by causing the trade/or purchasing public to be confused and/or deceived.

RESPONSE:

REQUEST 24: Produce all documents and things You contend supports Your contention that registration of Applicant's "COLOR WARS" mark will not injure Opposer by causing the trade/or purchasing public to be confused and/or deceived into believing that Applicant's Goods are those of Opposer or are sponsored by Opposer.

RESPONSE:

REQUEST 25: Produce all documents and things You contend supports Your contention that registration of Applicant's "COLOR WARS" mark will not injure Opposer by placing a cloud over Opposer's title to its "COLORWORX<sup>®</sup>" mark.

RESPONSE:



REQUEST 26: Produce all documents and things You contend supports Your contention that Applicant's "COLOR WARS" mark is not the same, or substantially the same, as Opposer's mark "COLORWORX®," including in visual appearance and in pronunciation.

RESPONSE:

REQUEST 27: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 5 of Opposer's First Set of Interrogatories to Applicant.

RESPONSE:

REQUEST 28: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 6 of Opposer's First Set of Interrogatories to Applicant.

RESPONSE:

REQUEST 29: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 7 of Opposer's First Set of Interrogatories to Applicant.

RESPONSE:

REQUEST 30: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 8 of Opposer's First Set of Interrogatories to Applicant.

RESPONSE:

REQUEST 31: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 9 of Opposer's First Set of Interrogatories to Applicant.

RESPONSE:

REQUEST 32: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 10 of Opposer's First Set of Interrogatories to Applicant.

RESPONSE:

REQUEST 33: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 11 of Opposer's First Set of Interrogatories to Applicant.

RESPONSE:

REQUEST 34: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 12 of Opposer's First Set of Interrogatories to Applicant.

RESPONSE:

REQUEST 35: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 13 of Opposer's First Set of Interrogatories to Applicant.

RESPONSE:

REQUEST 36: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 14 of Opposer's First Set of Interrogatories to Applicant.

RESPONSE:

REQUEST 37: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 15 of Opposer's First Set of Interrogatories to Applicant.

RESPONSE:

REQUEST 38: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 16 of Opposer's First Set of Interrogatories to Applicant.

RESPONSE:

REQUEST 39: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 17 of Opposer's First Set of Interrogatories to Applicant.

RESPONSE:

Dated: April 26, 2012

Respectfully submitted,

CHALKER FLORES, LLP

By: 

Scott A. Meyer  
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**ATTORNEYS FOR OPPOSER**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing OPPOSER'S FIRST REQUEST FOR PRODUCTION TO APPLICANT was served on all parties, this the 26<sup>th</sup> day of April, 2012, by sending the same electronic mail, to the following:

Joel L. Beling  
1 Mirboo Court  
Dallas, Victoria 3047  
Australia  
[joelbeling@hotmail.com](mailto:joelbeling@hotmail.com)



Thomas G. Jacks

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In Re: Application Serial No. 85/324,443  
For the Mark: COLOR WARS  
Filed: May 18, 2011  
Published in the Official Gazette: January 17, 2012

Ennis, Inc.	)	
	)	
	)	
Opposer	)	
	)	
	)	
v.	)	Opp. No. 91203884
	)	
	)	
Joel L. Beling d/b/a Supa Characters Pty Ltd	)	
	)	
Applicant	)	
	)	
	)	

**OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT**

To: Joel L. Beling d/b/a Supa Characters Pty Ltd, Applicant, 1 Mirboo Court, Dallas, Victoria 3047, Australia.

Ennis, Inc. ("Opposer") serves these interrogatories on Joel L. Beling d/b/a Supa Characters Pty Ltd ("Applicant") as authorized by Federal Rule of Civil Procedure 33 and Trademark Rule 2.120(d), 37 C.F.R. § 2.120(d). Applicant must serve an answer to each Interrogatory separately and fully, in writing and under oath, within 30 days after service.

**DEFINITIONS AND INSTRUCTIONS**

The following terms have the following meanings, unless the context requires otherwise:

1. "Opposer" and/or "Ennis" as well as a party's full or abbreviated name or a pronoun referring to a party, means the party, and where applicable, the party's agents, representatives, officers, directors, employees, partners, corporate agents, subsidiaries, affiliates, or any other person acting in concert with the party or under the party's control, whether directly or indirectly, including any attorney.
2. "You" or "your" means Joel L. Beling d/b/a Supa Characters Pty Ltd, Applicant, as well as its agents, employees, and all other persons acting on behalf of Applicant or its successors, predecessors, heirs, beneficiaries or assigns.
3. "Communication" means the transmittal of information in the form of facts, ideas, inquiries, or otherwise.
4. "Identify (person)." When referring to a person, "identify" means to give, to the extent known, the person's full name, present or last known address, telephone number, and, when referring to a natural person, the present or last known place of employment. Once a person has been identified in compliance with this paragraph, only the name of that person needs to be listed in response to later discovery requesting the identification of that person.
5. "Identify (document)." When referring to a document, "identify" means to give, to the extent known, the following information: (a) the type of document; (b) the general subject matter of the document; (c) the date of the document; (d) the authors, addressees, and recipients of the document; (e) the location of the document; (f) the identity of the person who has custody of the document; and (g) whether the document has been destroyed, and if so, (i) the date of its destruction, (ii) the reason for its destruction, and (iii) the identity of the person who destroyed it.
6. "Any" should be understood in either its most or its least inclusive sense as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
7. "And/Or." The connectives "and" and "or" should be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
8. "Number." The use of the singular form of any word includes the plural and vice versa.
9. "Possession, custody, or control" of an item means that the person either has physical possession of the item or has a right to possession equal or superior to that of the person who has physical possession of the item.
10. "Person" means any natural person, corporation, firm, association, partnership, joint venture, proprietorship, governmental body, or any other organization, business, or legal entity, and all predecessors or successors in interest.
11. "COLOR WARS" defines the mark COLOR WARS, U.S. Trademark Application Serial No. 85/324,443, applied for by Joel L. Beling d/b/a Supa Characters Pty Ltd.

12. "COLORWORX" defines the mark COLORWORX®, U.S. Trademark Registration No. 3,372,884 and includes a variety of printing goods and printing services that are international Class 40 products manufactured and put into the stream of commerce by Ennis, Inc.

13. "Identify" or "describe" when referring to a person, means you must state the following:

- a. The full name.
- b. The present or last known residential address and residential telephone number.
- c. The present or last known office address and office telephone number.
- d. The occupation, job title, employer, and employer's address at the time of the event or period referred to in each particular interrogatory.
- e. In the case of any entity, identify the officer, employee, or agent most closely connected with the subject matter of the interrogatory and the officer who is responsible for supervising that officer or employee.

14. "Identify" or "describe" when referring to a document, means you must state the following:

- a. The nature (e.g., letter, handwritten note) of the document.
- b. The title or heading that appears on the document.
- c. The date of the document and the date of each addendum, supplement, or other addition or change.
- d. The identity of the author and of the signer of the document, and of the person on whose behalf or at whose request or direction the document was prepared or delivered.
- e. The present location of the document, and the name, address, position or title, and telephone number of the person or persons having custody of the document.

15. "Document" means all written, typed, or printed matter and all magnetic, electronic, or other records or documentation of any kind or description in your actual possession, custody, or control, including those in the possession, custody, or control of any and all present or former directors, officers, employees, consultants, accountants, attorneys, or other agents, whether or not prepared by you, that constitute or contain matters relevant to the subject matter of the action.

16. Wherever in the following interrogatories Applicant is asked to identify documents, it is requested that the documents be identified by stating:

- a. general type of document, e.g., letter, memorandum, report, miscellaneous, notes, etc.;
- b. date;
- c. author;
- d. organization, if any, with which author was connected;
- e. addressee or recipient;
- f. other distributees;
- g. organization, if any, with which addressee or recipient, or distributees were connected;

h. general nature of the subject matter to extent that Applicant can do so without divulging matter considered by it to be privileged;

i. present location of such document and each copy thereof known to Applicant, including the title, index number and location, if any, of the file in which the document is kept by the Applicant or the file from which such document was removed, if removed for the purposes of this case, and the identity of all persons responsible for the filing or other disposition of the document.

17. Should Applicant deem to be privileged any documents concerning information which is requested by any of the following interrogatories, Applicant shall list such documents and supply information as requested concerning such documents and additionally shall indicate that they claim privilege therefore, briefly state the nature of the document, the sender, the author, the recipient of each copy, the date, the name of each person to whom the original or any copy was circulated, the names appearing on any circulation list of Applicant associated with such document, a summary statement of the subject matter(s) of such document in sufficient detail to permit the Court to conduct an analysis to reach a determination of any claim of privilege or exclusion and separate indication of the basis for assertion of privilege or the like for each such document.

18. Wherever in the following interrogatories Applicant is asked to identify a product, it is requested that the product be identified by stating the catalog, stock, model or the like number or designation, the trademark, name, type, grade, and any other designation customarily used by the party concerned to designate such product, and to distinguish it from others made by the same or a different producer.

19. Each of the separate interrogatories herein is deemed to seek separate answers and responses as of the date they are answered. However, these interrogatories shall be deemed to be continuing and any additional information relating in any way to these interrogatories and to events occurring or documents existing prior to the filing of the Opposition herein which Applicant acquires or which becomes known to Applicant up to and including the close of discovery shall be furnished to Opposer within a reasonable time after such information is acquired or becomes known. Applicant's response to these interrogatories is to be promptly supplemented to include subsequently acquired information in accordance with the requirements of Fed. R. Civ. P. 26(e).

### **INTERROGATORIES**

**INTERROGATORY NO. 1:** Specify the date and describe the details of Applicant's first use of "COLOR WARS" on its services and/or products, including indentifying all persons involved and all materials referring or relating to the usage.

ANSWER:



**INTERROGATORY NO. 2:** When did Applicant first intend to use, sell or offer to sell products and/or services under the mark "COLOR WARS"?

ANSWER:

**INTERROGATORY NO. 3:** Identify each and every geographical location where Applicant intends to use or has used "COLOR WARS", including specifying the dates of first use and first offer of services and/or products in the identified geographical location.

ANSWER:

**INTERROGATORY NO. 4:** Identify every product and service in connection with which you have used, are using, or plan to use under or with the "COLOR WARS" mark.

ANSWER:

**INTERROGATORY NO. 5:** Identify the media in or through which Applicant advertises or promotes its services and/or products under or with the "COLOR WARS" mark.

ANSWER:

**INTERROGATORY NO. 6:** Identify each person or the entity whom distributed, circulated, sold, or advertised services and/or products in connection with the "COLOR WARS" mark, including whether any contract exists for distribution, circulation, sale, or advertisement.

ANSWER:

**INTERROGATORY NO. 7:** Identify all facts, laws, information, or materials that Applicant relies on to support the contention that all or part of the mark "COLOR WARS" is not confusingly similar to the mark "COLORWORX®".

ANSWER:



**INTERROGATORY NO. 8:** Identify all facts, laws, information, or materials that Applicant relies on to support the contention that there is no likelihood of confusion between any trademark, service mark, domain name, or other designation of Opposer and any trademark, service mark, domain name, or other designation of Applicant.

ANSWER:

**INTERROGATORY NO. 9:** Identify all facts, laws, information, or materials that Applicant relies on to support the contention that Applicant's mark will not injure Opposer by causing the trade and/or purchasing public to be confused and/or deceived.

ANSWER:

**INTERROGATORY NO. 10:** Identify all facts, laws, information, or materials that Applicant relies on to support the contention that Opposer's mark has not acquired secondary meaning among the public or trade.

ANSWER:

**INTERROGATORY NO. 11:** Identify all facts, laws, information, or materials that Applicant relies on to support the contention that Applicant's mark will not place a cloud over Opposer's mark.

ANSWER:

**INTERROGATORY NO. 12:** Identify all facts, laws, information, or materials that Applicant relies on to support the contention that Applicant's mark is not the same as, or substantially the same as, Opposer's mark in visual appearance and in pronunciation.

ANSWER:

**INTERROGATORY NO. 13:** Identify each officer of Supa Characters Pty Ltd, including each officer's name, title, address, and job duties.

ANSWER:

**INTERROGATORY NO. 14:** Identify each person who participated in the selection, design and adoption of the "COLOR WARS" mark.

ANSWER:

**INTERROGATORY NO. 15:** Identify every opinion, legal or otherwise, requested or received by you, regarding the right to use the mark "COLOR WARS", including the identity of the persons requesting the opinion, the date and substance of the opinion, and the persons receiving the opinion.

ANSWER:

**INTERROGATORY NO. 16:** Describe in detail any instances in which a third party, other than Opposer, has challenged your right to use the mark "COLOR WARS".

ANSWER:


**INTERROGATORY NO. 17:** Describe in detail any plans for future expansion, including but not limited to, expansion of marketing lines, services, customer base or geographical areas served.

ANSWER:

Dated: April 26, 2012

Respectfully submitted,

CHALKER FLORES, LLP

By:   
\_\_\_\_\_  
Scott A. Meyer  
State Bar No. 24013162  
Thomas G. Jacks  
State Bar No. 24067681  
14951 N. Dallas Parkway, Suite 400  
Dallas, Texas 75254  
(214) 866-0001 (telephone)  
(214) 866-0010 (telecopy)  
smeyer@chalkerflores.com  
tjacks@chalkerflores.com

**ATTORNEYS FOR OPPOSER**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT was served on all parties, this the 26<sup>th</sup> day of April, 2012, by sending the same via electronic mail, to the following:

Joel L. Beling  
1 Mirboo Court  
Dallas, Victoria 3047  
Australia  
[joelbeling@hotmail.com](mailto:joelbeling@hotmail.com)

  
\_\_\_\_\_  
Thomas G. Jacks

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In Re: Application Serial No. 85/324,443  
For the Mark: COLOR WARS  
Filed: May 18, 2011  
Published in the Official Gazette: January 17, 2012

Ennis, Inc.	)	
	)	
	)	
Opposer	)	
	)	
	)	
v.	)	Opp. No. 91203884
	)	
	)	
Joel L. Beling d/b/a Supa Characters Pty Ltd	)	
	)	
Applicant	)	
	)	
	)	

**OPPOSER'S OBJECTIONS AND RESPONSE TO  
APPLICANT'S FIRST REQUEST FOR PRODUCTION**

To: Joel L. Beling d/b/a Supa Characters Pty Ltd, Applicant, 1 Mirboo Court, Dallas, Victoria 3047, Australia.

Ennis, Inc. ("Opposer") serves these Objections and Responses to Applicant, Joel L. Beling d/b/a Supa Characters Pty Ltd's Request for Production ("Applicant") as authorized by Federal Rule of Civil Procedure 34 and Trademark Rule 2.120(d), 37 C.F.R. § 2.120(d).

**I.**  
**OBJECTIONS APPLICABLE TO ALL**  
**REQUESTS, INSTRUCTIONS AND DEFINITIONS**

Opposer agrees to respond to Applicant's Requests to the extent that Opposer is required to do so by the Federal Rules of Civil Procedure and the applicable case law, and to the extent that such are not otherwise objectionable.

Opposer further objects to the definitions and instructions set forth in Applicant's First Request for Production to the extent that it purports to assign to the words therein defined meanings other than those in common usage. Opposer will use the commonly accepted definition of words and phrases in answering the Requests.

Opposer hereby objects to all of the above-referenced definitions in each and every Request in which they are used as if objected to on the above-stated basis individually, and Opposer respond to all Requests listed below subject to, and without waiving, the above-stated objections.

**II.**  
**OBJECTIONS AND RESPONSES TO**  
**REQUESTS FOR PRODUCTION**

REQUEST 1: Produce working papers, notes, calculations, diagrams, photographs, models, exhibits, and other materials, including reports and factual observations, prepared or reviewed by any expert who will testify at trial on Opposer's behalf.

RESPONSE: None at this time.

REQUEST 2: Produce copies of all transcripts of testimony previously provided by any individual listed by You as an expert witness.

RESPONSE: None at this time.

REQUEST 3: Produce treatises, rules, regulations, guidelines, statutes, policies, procedures, and any other authoritative materials considered by any testifying expert in forming an opinion.

RESPONSE: None at this time.

REQUEST 4: Produce invoices, bills, and other billing materials for each expert You expect will testify at trial.

RESPONSE: None at this time.

REQUEST 5: Produce all photographs, videotapes, drawings, and other tangible things that pertain in any way to the subject matter of this suit.

RESPONSE: None at this time.

REQUEST 6: Produce copies of complaints or petitions in any action filed by or against You in which the allegations are similar to those of this suit.

RESPONSE: Opposer objects to this Request as Applicant has equal or greater access to the complaint or petition filed in *Joel L. Beling d/b/a Supa Characters Pty Ltd v. Ennis, Inc.; Cancellation No. 92055374*.

REQUEST 7: Produce copies of any claim made by or against You for damages similar to those alleged in this suit.

RESPONSE: None.

REQUEST 8: Produce all oral or written statements made by You or Your representatives concerning this suit.

RESPONSE: None.

REQUEST 9: Produce all documents and things relating to the creation, consideration, design, development, selection, adoption, and first use of the "COLORWORX" mark or any work of color (including black and white) or service.

RESPONSE: Opposer objects to this Request as it is overbroad, harassing, irrelevant, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

REQUEST 10: Produce representative specimens of each label, container, trade dress, wrapper, packaging, letterhead, sign, catalog, brochure, or other materials used to advertise, market, sell, promote, or otherwise commercialize any of the services or works of color (including black and white), sold, marketed, promoted or advertised by Opposer relating to the "COLORWORX" mark.

RESPONSE: Opposer refers Applicant to Opposer's document production produced on May 24, 2012, and to the United States Patent and Trademark Office, Trademark Electronic Search System.

REQUEST 11: Produce all documents and things relating to the geographic areas where services or works of color (including black and white) relating to Opposer's "COLORWORX" mark are advertised, marketed, sold, or promoted and the length of time each work of color (including black and white) or services has been advertised, marketed, sold, or promoted in each area.

RESPONSE: Opposer is currently offering goods and services worldwide via the Internet and through qualified dealers. Opposer refers Applicant to Opposer's document production produced on May 24, 2012.

REQUEST 12: Produce all documents and things relating to the distribution channels through which works of color (including black and white) or services relating to Opposer's "COLORWORX" mark are advertised, marketed, sold, or promoted.

RESPONSE: Opposer is currently offering goods and services worldwide via the Internet and through qualified dealers. Opposer refers Applicant to Opposer's document production produced on May 24, 2012.

REQUEST 13: Produce all documents and things relating to the classes of customers to whom You advertise, market, sell, or promote works of color (including black and white) or services relating to Opposer's "COLORWORX" mark.

RESPONSE: Opposer is currently offering goods and services worldwide via the Internet and through qualified dealers. Opposer refers Applicant to Opposer's document production produced on May 24, 2012.

REQUEST 14: Produce all documents and things relating to the yearly dollar and unit volume of sales to date and projected future dollar and unit volume of sales for each of the works of color (including black and white) or services produced by Opposer in connection with the "COLORWORX" mark.

RESPONSE: Opposer objects to this Request as it is overbroad, irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

REQUEST 15: Produce all documents and things relating to variable and fixed costs for sales of works of color (including black and white) or services relating to Opposer's "COLORWORX" mark.

RESPONSE: Opposer objects to this Request as it is overbroad, irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

REQUEST 16: Produce all documents and things relating to gross and net profits from sales of works of color (including black and white) or services relating to Opposer's "COLORWORX" mark.

RESPONSE: Opposer objects to this Request as it is overbroad, irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

REQUEST 17: Produce all documents and things relating to the yearly cost to You of advertising, marketing, selling, and promoting works of color (including black and white) or services relating to Opposer's "COLORWORX" mark.

RESPONSE: Opposer objects to this Request as it is overbroad, irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

REQUEST 18: Produce all documents and things concerning Your past, present, and future plans to advertise, market, sell, or promote works of color (including black and white) or services relating to Opposer's "COLORWORX" mark.

RESPONSE: Opposer objects to this Request as it is overbroad, irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

REQUEST 19: Produce representative specimens of all advertising and other promotional materials for works of color (including black and white) or services relating to Opposer's "COLORWORX" mark.

RESPONSE: Opposer refers Applicant to Opposer's document production produced on May 24, 2012, which shows representative specimens.

REQUEST 20: Produce all documents and things relating to Your yearly expenses to date and planned future expenses corresponding to each type of advertising and promotion used for works of color (including black and white) or services relating to Opposer's "COLORWORX" mark.

RESPONSE: Opposer objects to this Request as it is overbroad, irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

REQUEST 21: Produce documents and things relating to Applicant's intended and/or proposed works of color (including black and white) or services utilizing the "ColorWorx" mark.

RESPONSE: Opposer objects to this Request as it is overbroad, irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer refers Applicant to Opposer's document production produced on May 24, 2012, which shows representative specimens. Opposer is continuously updating the goods and services it offers under the mark COLORWORX and reserves the right to supplement its Response during the pendency of discovery in this matter.



REQUEST 22: Produce all documents and things You contend supports Your contention that Applicant's "COLOR WARS" mark does resemble "COLORWORX<sup>®</sup>" when used on or in connection with Your goods and services.

RESPONSE: Opposer refers Applicant to Opposer's Notice of Opposition and Opposer's document production produced on May 24, 2012.

REQUEST 23: Produce all documents and things You contend supports Your contention that registration of Applicant's "COLOR WARS" mark will injure Opposer by causing the trade/or purchasing public to be confused and/or deceived.

RESPONSE: Opposer refers Applicant to Opposer's Notice of Opposition and Opposer's document production produced on May 24, 2012.

REQUEST 24: Produce all documents and things You contend supports Your contention that registration of Applicant's "COLOR WARS" mark will injure Opposer by causing the trade/or purchasing public to be confused and/or deceived into believing that Applicant's Goods are those of Opposer or are sponsored by Opposer.

RESPONSE: Opposer refers Applicant to Opposer's Notice of Opposition and Opposer's document production produced on May 24, 2012.

REQUEST 25: Produce all documents and things You contend supports Your contention that registration of Applicant's "COLOR WARS" mark will injure Opposer by placing a cloud over Opposer's title to its "COLORWORX<sup>®</sup>" mark.

RESPONSE: Opposer refers Applicant to Opposer's Notice of Opposition and Opposer's document production produced on May 24, 2012.

REQUEST 26: Produce all documents and things You contend supports Your contention that Applicant's "COLOR WARS" mark is the same, or substantially the same, as Opposer's mark "COLORWORX<sup>®</sup>" including in visual appearance and in pronunciation.

RESPONSE: Opposer refers Applicant to Opposer's Notice of Opposition and Opposer's document production produced on May 24, 2012.

REQUEST 27: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 3 of Applicant's First Set of Interrogatories to Opposer.

RESPONSE: Opposer objects to this Request as it is overbroad, harassing, irrelevant, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

REQUEST 28: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 5 of Applicant's First Set of Interrogatories to Opposer.

RESPONSE: Opposer objects to this Request as it is duplicative, irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer refers Applicant to Opposer's Notice of Opposition and Opposer's document production produced on May 24, 2012.

REQUEST 29: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 6 of Applicant's First Set of Interrogatories to Opposer.

RESPONSE: Opposer objects to Request as it is overbroad, harassing, irrelevant, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

REQUEST 30: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 7 of Applicant's First Set of Interrogatories to Opposer.

RESPONSE: Opposer objects to this Request as it is overbroad, harassing, and requires Opposer to marshal its evidence prior to trial. Subject to, and without waiving, the foregoing objections, Opposer refers Applicant to Opposer's Notice of Opposition and Opposer's document production produced on May 24, 2012.

REQUEST 31: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 8 of Applicant's First Set of Interrogatories to Opposer.

RESPONSE: Opposer objects to this Request as it is overbroad, harassing, and requires Opposer to marshal its evidence prior to trial. Subject to, and without waiving, the foregoing objections, Opposer refers Applicant to Opposer's Notice of Opposition and Opposer's document production produced on May 24, 2012.

REQUEST 32: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 9 of Applicant's First Set of Interrogatories to Opposer.

RESPONSE: Opposer objects to this Request as it is overbroad, harassing, irrelevant, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

REQUEST 33: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 10 of Applicant's First Set of Interrogatories to Opposer.

RESPONSE: Opposer objects to this Request as it is overbroad, harassing, and requires Opposer to marshal its evidence prior to trial. Subject to, and without waiving, the foregoing objections, Opposer refers Applicant to Opposer's Notice of Opposition and Opposer's document production produced on May 24, 2012.

REQUEST 34: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 11 of Applicant's First Set of Interrogatories to Opposer.

RESPONSE: Opposer objects to this Request as it is overbroad, harassing, irrelevant, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

REQUEST 35: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 12 of Applicant's First Set of Interrogatories to Opposer.

RESPONSE: Opposer objects to this Request as it is overbroad, harassing, irrelevant, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

REQUEST 36: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 13 of Applicant's First Set of Interrogatories to Opposer.

RESPONSE: Opposer objects to this Request as it is overbroad, harassing, irrelevant, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

REQUEST 37: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 14 of Applicant's First Set of Interrogatories to Opposer.

RESPONSE: Opposer objects to this Request as it is overbroad, harassing, irrelevant, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

REQUEST 38: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 15 of Applicant's First Set of Interrogatories to Opposer.

RESPONSE: Opposer objects to this Request as it is overbroad, harassing, irrelevant, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

REQUEST 39: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 16 of Applicant's First Set of Interrogatories to Opposer.

RESPONSE: Opposer objects to this Request as it is overbroad, harassing, irrelevant, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Additionally, Opposer asserts the attorney-client and work-product privileges.

REQUEST 40: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 17 of Applicant's First Set of Interrogatories to Opposer.

RESPONSE: Opposer objects to this Request as it is overbroad, harassing, irrelevant, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

REQUEST 41: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 18 of Applicant's First Set of Interrogatories to Opposer.

RESPONSE: Opposer objects to this Request as it is overbroad, harassing, irrelevant, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

REQUEST 42: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 19 of Applicant's First Set of Interrogatories to Opposer.

RESPONSE: Opposer objects to this Request as it is overbroad, harassing, irrelevant, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Additionally, Opposer asserts the attorney-client and work-product privileges.

REQUEST 43: Produce all documents and things relating to the financial health of the ColorWorx mark, including all documents and things submitted to and received from the Internal Revenue Service and all accounting documents.

RESPONSE: Opposer objects to this Request as it is overbroad, harassing, irrelevant, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

Dated: June 11, 2012

Respectfully submitted,

CHALKER FLORES, LLP

By: 

Scott A. Meyer

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**ATTORNEYS FOR OPPOSER**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing OPPOSER'S OBJECTIONS AND RESPONSE TO APPLICANT'S FIRST REQUEST FOR PRODUCTION was served on all parties, this the 11<sup>th</sup> day of June, 2012, by sending the same via electronic mail, to the following:

Joel L. Beling  
1 Mirboo Court  
Dallas, Victoria 3047  
Australia  
[joelbeling@hotmail.com](mailto:joelbeling@hotmail.com)

  
\_\_\_\_\_  
Scott A. Meyer

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In Re: Application Serial No. 85/324,443  
For the Mark: COLOR WARS  
Filed: May 18, 2011  
Published in the Official Gazette: January 17, 2012

Ennis, Inc.	)	
	)	
	)	
Opposer	)	
	)	
v.	)	Opp. No. 91203884
	)	
	)	
Joel L. Beling d/b/a Supa Characters Pty Ltd	)	
	)	
Applicant	)	
	)	
	)	

**OPPOSER'S OBJECTIONS AND ANSWERS  
TO APPLICANT'S FIRST SET OF INTERROGATORIES**

To: Joel L. Beling d/b/a Supa Characters Pty Ltd, Applicant, 1 Mirboo Court, Dallas, Victoria 3047, Australia.

Ennis, Inc. ("Opposer") serves these objections and answers to Applicant, Joel L. Beling d/b/a Supa Characters Pty Ltd's Interrogatories ("Applicant") as authorized by Federal Rule of Civil Procedure 33 and Trademark Rule 2.120(d), 37 C.F.R. § 2.120(d).



**I.**  
**OBJECTIONS APPLICABLE TO ALL**  
**INTERROGATORIES, INSTRUCTIONS AND DEFINITIONS**

Opposer agrees to answer Applicant's Interrogatories to the extent that Opposer is required to do so by the Federal Rules of Civil Procedure and the applicable case law, and to the extent that such are not otherwise objectionable.

Opposer further objects to the definitions and instructions set forth in Applicant's First Set of Interrogatories to the extent that it purports to assign to the words therein defined meanings other than those in common usage. Opposer will use the commonly accepted definition of words and phrases in answering the Interrogatories.

Opposer hereby objects to all of the above-referenced definitions in each and every Interrogatory in which they are used as if objected to on the above-stated basis individually, and Opposer answers all Interrogatories listed below subject to, and without waiving, the above-stated objections.

**II.**  
**OBJECTIONS AND ANSWERS TO INTERROGATORIES**

**INTERROGATORY NO. 1:** Specify the date and describe the details of Opposer's first use of "COLORWORX" mark on any works of color, including but not limited to business cards, letterhead, rack cards, postcards, brochures, and posters and identifying all persons involved and all materials referring or relating to the usage.

**ANSWER:** Opposer objects to this Interrogatory as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Opposer has continuously used the COLORWORX mark in interstate commerce as a trademark for a variety of printing goods and printing services, including, but not limited to, business cards, letterhead, sell sheets, rack cards, postcards, brochures and posters since August of 2002. Opposer refers Applicant to Opposer's document production produced on May 24, 2012 showing various other items Opposer uses its COLORWORX mark on including, but not limited to, various advertising tools and promotional items, financial tools, hospitality products, award products and business products.

**INTERROGATORY NO. 2:** Describe in detail the process, procedure, facts, material and information you use for each of the works of color offered for sale by you, including but not limited to business cards, letterhead, rack cards, postcards, brochures, and posters, from the point at which a customer first contacts you to the point at which your customer is satisfied, including any system, process or procedure for satisfying dissatisfied customers.

ANSWER: Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

**INTERROGATORY NO. 3:** Identify and describe in detail each possible color choice, including black and white, you currently offer or have offered to your customers for each work of color you sell, advertise, promote or distribute, including but not limited to business cards, letterhead, rack cards, postcards, brochures, and posters.

ANSWER: Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

**INTERROGATORY NO. 4:** Define in detail your understanding of the phrases “color works” and “works of color.”

ANSWER: Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

**INTERROGATORY NO. 5:** Identify the media in or through which Opposer advertises or promotes its works of color, including but not limited to business cards, letterhead, rack cards, postcards, brochures, and posters, under or with the “COLORWORX” mark.

ANSWER: Opposer objects to this Interrogatory as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Opposer has continuously used the COLORWORX mark in interstate commerce as a trademark for a variety of printing goods and printing services, including, but not limited to, business cards, letterhead, sell sheets, rack cards, postcards, brochures and posters since August of 2002. Opposer refers Applicant to Opposer’s document production produced on May 24, 2012 showing various other items Opposer uses its COLORWORX mark on including, but not limited to, various advertising tools and promotional items, financial tools, hospitality products, award products and business products.

**INTERROGATORY NO. 6:** Identify each person or the entity whom distributed, circulated, sold, or advertised your works of color, including but not limited to business cards, letterhead,



rack cards, postcards, brochures, and posters, in connection with the "COLORWORX" mark, including whether any contract exists for distribution, circulation, sale, or advertisement.

ANSWER: Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

**INTERROGATORY NO. 7:** Identify all facts, laws, information, or materials that Opposer relies on to support the contention that all or part of the mark "COLOR WARS" is confusingly similar to the mark "COLORWORX®".

ANSWER: Opposer objects to this Interrogatory as it is overbroad, harassing, and requires Opposer to marshal its evidence prior to trial. Subject to, and without waiving, the foregoing objections, Opposer refers Applicant to Opposer's Notice of Opposition and Opposer's document production produced on May 24, 2012.

**INTERROGATORY NO. 8:** Identify all facts, laws, information, or materials that Opposer relies on to support the contention that there is a likelihood of confusion and/or deception between any trademark, service mark, domain name, or other designation of Opposer and any trademark, service mark, domain name, or other designation of Applicant.

ANSWER: Opposer objects to this Interrogatory as it is overbroad, harassing, and requires Opposer to marshal its evidence prior to trial. Subject to, and without waiving, the foregoing objections, Opposer refers Applicant to Opposer's Notice of Opposition and Opposer's document production produced on May 24, 2012.

**INTERROGATORY NO. 9:** Describe in detail the similarities and/or points of confusion and/or deception between the word "wars" and the word "works."

ANSWER: Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

**INTERROGATORY NO. 10:** Identify all facts, laws, information, or materials that Opposer relies on to support the contention that Applicant's mark is the same as, or substantially the same as, Opposer's mark in visual appearance and in pronunciation.

ANSWER: Opposer objects to this Interrogatory as it is overbroad, harassing, and requires Opposer to marshal its evidence prior to trial. Subject to, and without waiving, the foregoing objections, Opposer refers Applicant to Opposer's Notice of Opposition and Opposer's document production produced on May 24, 2012.

**INTERROGATORY NO. 11:** Identify each officer of any company and/or business connected with the design, sale, marketing, advertising, promotion and distribution of works of color connected to the "COLORWORX" mark, including each officer's name, title, address, and job duties.

ANSWER: Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

**INTERROGATORY NO. 12:** Identify each person who participated in the selection, design and adoption of the "COLORWORX" mark.

ANSWER: Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

**INTERROGATORY NO. 13:** Describe in detail the role and contributions made that each person identified in Interrogatory number 12 played in the selection, design and adoption of the "COLORWORX" mark.

ANSWER: Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

**INTERROGATORY NO. 14:** Describe in detail the rationale, philosophy and ideas behind the selection, design and adoption of each feature and/or part of the "COLORWORX" mark, including the logo, words, style of lettering, visual appearance, sound, compound/composite nature and misspelling.

ANSWER: Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

**INTERROGATORY NO. 15:** Describe in detail your understanding of the connections between each aspect of your answer to Interrogatory No. 14 and the works of color you sell, promote, advertise and distribute, including but not limited to business cards, letterhead, rack cards, postcards, brochures, and posters.

ANSWER: Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

**INTERROGATORY NO. 16:** Identify every opinion, legal or otherwise, requested or received by you, regarding the right to use the marks "COLORWORX," "COLOR WORX," "COLORWORKS," or "COLOR WORKS," including the identity of the persons requesting the opinion, the date and substance of the opinion, and the persons receiving the opinion.

ANSWER: Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Additionally, Opposer asserts the attorney-client and work-product privileges.

**INTERROGATORY NO. 17:** Describe in detail any instances in which you have been involved which have called into question, created conflict in respect of, or challenged the right to use the marks “COLORWORX,” “COLOR WORX,” “COLORWORKS,” or “COLOR WORKS.”

ANSWER: Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

**INTERROGATORY NO. 18:** Describe in detail any plans for future expansion, including but not limited to, expansion of marketing lines, services, customer base or geographical areas served, and goods and services in international classes 16 and 41.

ANSWER: Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

**INTERROGATORY NO. 19:** Identify and describe all facts, laws, information, or materials that Opposer found, discovered, became aware of and/or knew about before, during and after its registration of the COLORWORX mark involving use of the marks “COLORWORX,” “COLOR WORX,” “COLORWORKS,” or “COLOR WORKS.”

ANSWER: Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Additionally, Opposer asserts the attorney-client and work-product privileges.

Dated: June 11, 2012

Respectfully submitted,

CHALKER FLORES, LLP

By: 

Scott A. Meyer

State Bar No. 24013162

Thomas G. Jacks

State Bar No. 24067681

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Dallas, Texas 75254

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(214) 866-0010 (telecopy)

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tjacks@chalkerflores.com

**ATTORNEYS FOR OPPOSER**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing OPPOSER'S OBJECTIONS AND ANSWERS TO APPLICANT'S FIRST SET OF INTERROGATORIES was served on all parties, this the 11 day of June, 2012, by sending the same via electronic mail, to the following:

Joel L. Beling  
1 Mirboo Court  
Dallas, Victoria 3047  
Australia  
[joelbeling@hotmail.com](mailto:joelbeling@hotmail.com)

  
\_\_\_\_\_  
Scott A. Meyer

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In Re: Application Serial No. 85/324,443  
For the Mark: COLOR WARS  
Filed: May 18, 2011  
Published in the Official Gazette: January 17, 2012

Ennis, Inc.	)	
	)	
	)	
Opposer	)	
	)	
	)	Opp. No. 91203884
v.	)	
	)	
	)	
Joel L. Beling d/b/a Supa Characters Pty Ltd	)	
	)	
Applicant	)	
	)	
	)	

**OPPOSER’S OBJECTIONS AND RESPONSES TO  
APPLICANT’S FIRST REQUEST FOR ADMISSIONS**

To: Joel L. Beling d/b/a Supa Characters Pty Ltd, Applicant, 1 Mirboo Court, Dallas, Victoria 3047, Australia.

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Ennis, Inc. (“Opposer”) hereby serves its Objections and Responses to Applicant’s First Request for Admissions on Joel L. Beling d/b/a Supa Characters Pty Ltd (“Applicant”).

**I.  
OBJECTIONS APPLICABLE TO ALL  
ADMISSIONS, INSTRUCTIONS AND DEFINITIONS**

Opposer agrees to respond to Applicant’s Admissions to the extent that Opposer is required to do so by the Federal Rules of Civil Procedure and the applicable case law, and to the extent that such are not otherwise objectionable.

Opposer further objects to the definitions and instructions set forth in Applicant's First Request for Admissions to the extent that it purports to assign to the words therein defined meanings other than those in common usage. Opposer will use the commonly accepted definition of words and phrases in responding to the Admissions.

Opposer hereby objects to all of the above-referenced definitions in each and every request in which they are used as if objected to on the above-stated basis individually, and Opposer responds to all Admissions listed below subject to, and without waiving, the above-stated objections.

## **II. OBJECTIONS AND RESPONSES TO REQUEST FOR ADMISSIONS**

REQUEST NO. 1: Opposer sells printed goods and printing services which involve the use of color.

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Admit.

REQUEST NO. 2: Color is an essential and indispensable feature of Opposer's printing business.

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Opposer admits that the four color process is part of the printing industry. Otherwise, denied to the extent the request has any bearing on Opposer's rights in and to its registered COLORWORX mark.

REQUEST NO. 3: Color, and the use of color, are generic parts of the goods and services offered for sale by all traders who offer printed goods and printing services.

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Denied to the extent the request has any bearing on Opposer's rights in and to its registered COLORWORX mark.



REQUEST NO. 4: Color, and the use of color, are descriptive parts of the goods and services offered for sale by all traders who offer printed goods and printing services.

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Denied to the extent the request has any bearing on Opposer's rights in and to its registered COLORWORX mark.

REQUEST NO. 5: Opposer offers printed goods and printing services to the general public in color or in black and white.

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Admit.

REQUEST NO. 6: A customer of Opposer may choose to purchase a good or service sold by Opposer in color or in black and white.

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Admit.

REQUEST NO. 7: A customer of Opposer may choose to purchase a good or service sold by Opposer in at least one of four colors, the choice of color being with the customer.

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Admit.

REQUEST NO. 8: Opposer does not claim exclusive right to use of the word "color" in relation to printed goods and printing services.

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Denied to the extent the request has any bearing on Opposer's rights in and to its registered COLORWORX mark.

REQUEST NO. 9: The word “Worx” has the same or substantially similar meaning as the word “works.”

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Denied to the extent the request has any bearing on Opposer’s rights in and to its registered COLORWORX mark.

REQUEST NO. 10: The word “Worx” has the same or substantially similar sound as the word “works.”

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Admit.

REQUEST NO. 11: The word “Worx” has the same or substantially similar appearance as the word “works.”

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Denied to the extent the request has any bearing on Opposer’s rights in and to its registered COLORWORX mark.

REQUEST NO. 12: The word “Worx” has the same or substantially similar commercial impression as the word “works.”

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Denied to the extent the request has any bearing on Opposer’s rights in and to its registered COLORWORX mark.

REQUEST NO. 13: The word “Worx” is an insignificant misspelling of the word “works.”

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Denied to the extent the request has any bearing on Opposer’s rights in and to its registered COLORWORX mark.



REQUEST NO. 14: Opposer does not claim exclusive right to use of the word “works” in relation to printed goods and printing services.

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Denied to the extent the request has any bearing on Opposer’s rights in and to its registered COLORWORX mark.

REQUEST NO. 15: Opposer’s customers often ask, either orally or in writing, for printed goods and printing services using the phrase “ColorWorx.”

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Denied as customers use “COLORWORX” in reference to Opposer’s business name, not a printing process, and to the extent the request has any bearing on Opposer’s rights in and to its registered COLORWORX mark.

REQUEST NO. 16: When the two ordinary words “color” and “works” are joined into a compound (namely ColorWorks), they form a phrase which has a commonly understood meaning, i.e., works of color.

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Denied to the extent the request has any bearing on Opposer’s rights in and to its registered COLORWORX mark..

REQUEST NO. 17: The compound word “ColorWorx” has the same or substantially similar meaning as the words “color works.”

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Denied to the extent the request has any bearing on Opposer’s rights in and to its registered COLORWORX mark.

REQUEST NO. 18: The compound word “ColorWorx” has the same or substantially similar sound as the words “color works.”

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Admit.

REQUEST NO. 19: The compound word “ColorWorx” has the same or substantially similar appearance as the words “color works.”

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Denied to the extent the request has any bearing on Opposer’s rights in and to its registered COLORWORX mark.

REQUEST NO. 20: The compound word “ColorWorx” has the same or substantially similar commercial impression as the words “color works.”

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Denied to the extent the request has any bearing on Opposer’s rights in and to its registered COLORWORX mark.

REQUEST NO. 21: The compound word “ColorWorx” is an insignificant and/or minor misspelling and/or abbreviation of the words “color works.”

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Denied to the extent the request has any bearing on Opposer’s rights in and to its registered COLORWORX mark.

REQUEST NO. 22: The compound word “ColorWorx” alone, without Opposer’s logo/design, is not distinctive of, and fails to distinguish, Opposer’s goods and services from the goods and services of other traders.

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer

answers as follows: Denied to the extent the request has any bearing on Opposer's rights in and to its registered COLORWORX mark.

REQUEST NO. 23: Opposer offers for sale goods and services which, according to standard dictionary definitions of the words "Color" and "Works," may be classified as color works.

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Denied to the extent the request has any bearing on Opposer's rights in and to its registered COLORWORX mark.

REQUEST NO. 24: Opposer adopted the word ColorWorx as its mark because the words Color Works or ColorWorks were likely to cause confusion, mistake or deceive with the goods and services of other traders.

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Denied to the extent the request has any bearing on Opposer's rights in and to its registered COLORWORX mark.

REQUEST NO. 25: Leaving aside, and independent of, the compound word "ColorWorx," the logo/design in Opposer's mark is highly distinctive and capable of distinguishing Opposer's goods and services from the goods and services of other traders.

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Admit.

REQUEST NO. 26: Leaving aside, and independent of, the compound word "ColorWorx," the logo/design in Opposer's mark is distinctive and capable of distinguishing Opposer's goods and services from the goods and services of other traders.

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Admit.

REQUEST NO. 27: Leaving aside, and independent of, the compound word "ColorWorx," the

logo/design in Opposer's mark is moderately distinctive and capable of distinguishing Opposer's goods and services from the goods and services of other traders.

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Denied to the extent the request has any bearing on Opposer's rights in and to its registered COLORWORX mark.

REQUEST NO. 28: Leaving aside, and independent of, the compound word "ColorWorx," the logo/design in Opposer's mark is weak and not capable of distinguishing Opposer's goods and services from the goods and services of other traders.

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Denied to the extent the request has any bearing on Opposer's rights in and to its registered COLORWORX mark.

REQUEST NO. 29: In the creation of its mark, Opposer added a logo/design because the words ColorWorx did not distinctly distinguish its goods and services from the goods and services of other traders.

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Denied to the extent the request has any bearing on Opposer's rights in and to its registered COLORWORX mark.

REQUEST NO. 30: The word "works" has a dissimilar and/or different meaning to the word "wars."

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Denied to the extent the request has any bearing on Opposer's rights in and to its registered COLORWORX mark.

REQUEST NO. 31: The word "works" has a dissimilar and/or different commercial impression to the word "wars."

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at

trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Denied to the extent the request has any bearing on Opposer's rights in and to its registered COLORWORX mark.

REQUEST NO. 32: The general public can distinguish between the words "works" and "wars."

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Denied to the extent the request has any bearing on Opposer's rights in and to its registered COLORWORX mark.

REQUEST NO. 33: Opposer has no intention of expanding its business to include goods and services in international class 41.

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

REQUEST NO. 34: Opposer's primary concern with Applicant's international class 41 application is that, if Applicant sold goods and services in this class under its applied-for mark, it would be likely to dilute Opposer's business, good name and reputation.

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Denied.

REQUEST NO. 35: Opposer has built up such a reputation in its mark that if the general public heard the compound word "ColorWorx" (without seeing Opposer's logo), they would be likely to think of and connect this word with Opposer's business and/or goods and services.

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Admit.

REQUEST NO. 36: Opposer has sold and currently sells some printed goods and printing services which are not sold under the Opposer's "ColorWorx" mark.

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Denied.

REQUEST NO. 37: Opposer has used and currently uses distributors to sell some of its printed goods and printed services, such distributors not using the ColorWorx mark.

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Denied.

REQUEST NO. 38: Prior to applying to the United States Trademark and Patent Office for registration of its mark, Opposer, by itself and through its attorneys and agents, conducted a thorough check and search of all commercial uses of the words “Color Works” and “ColorWorx” in the United States, including but not limited to internet searches and searches of the USPTO trademark database.

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Additionally, Opposer asserts the attorney-client and work-product privileges.

REQUEST NO. 39: At the time it applied for registration of its mark with the United States Trademark and Patent Office, Opposer was aware and had knowledge that other traders outside the printing industry used the words “Color Works” and/or “ColorWorx” to indicate the origin of their goods and services.

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

REQUEST NO. 40: At the time it applied for registration of its mark with the United States Trademark and Patent Office, Opposer was aware and had knowledge that other traders in fields related to the printing industry used the words “color Works” and/or “ColorWorx” to indicate the origin of their goods and services.

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial.



REQUEST NO. 41: At the time it applied for registration of its mark with the United States Trademark and Patent Office, Opposer was aware and had knowledge that other traders in fields closely related to the printing industry used the words “color Works” and/or “ColorWorx” to indicate the origin of their goods and services.

RESPONSE: Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

Dated: June 11, 2012

Respectfully submitted,

CHALKER FLORES, LLP

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**ATTORNEYS FOR OPPOSER**

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing OPPOSER'S OBJECTIONS AND RESPONSES TO APPLICANT'S REQUEST FOR ADMISSIONS was served on all parties, this the 11<sup>th</sup> day of June, 2012, by sending the same via electronic mail, to the following:

Joel L. Beling  
1 Mirboo Court  
Dallas, Victoria 3047  
Australia  
[joelbeling@hotmail.com](mailto:joelbeling@hotmail.com)



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Scott A. Meyer